

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Rate and Service Changes to
Implement Baseline Negotiated
Service Agreement with Bookspan

Docket No. MC2005-3

PRESIDING OFFICER'S RULING
ESTABLISHING PROCEDURAL SCHEDULE

(Issued August 16, 2005)

Prehearing Conference. The following procedural issues were discussed at the August 11, 2005 prehearing conference. The late interventions of the Association for Postal Commerce, Magazine Publishers of America, Inc., and National Newspaper Association were accepted. The settlement coordinator reviewed the issues presented at the August 10, 2005 settlement conference and orally updated the settlement conference report that was filed earlier that morning.¹ The parties identified issues that they believed would necessitate a hearing and discussed their opinions of the necessity and timing of the other procedural stages in the case.

Settlement Coordinator's Report. The settlement coordinator informed the Commission that the parties in attendance at the August 10, 2005 settlement conference (Settlement Conference Participants) believe that a total settlement would not be possible, although the discussions were extremely productive and the participants may be able to specify and limit the factual issues needing litigation.² He believes an additional settlement conference held prior to the hearings would be helpful. The settlement coordinator also stated that the Settlement Conference Participants expected evidentiary hearings to be necessary.

¹ Report on First Settlement Conference and Proposed Procedural Schedule, August 11, 2005.

² The settlement coordinator represented to the Commission that all but two of the intervenors attended this settlement conference.

Identification of Issues. In response to Order No. 1441, participants identified several issues that need further exploration in this case, including the “before rates” and “after rates” volume forecasts, and the quantification of the financial impact of the NSA on the Postal Service. Some participants also believe that the “multiplier effect” needs to be explored for more objective criteria. Other issues identified by participants are whether certain mergers or acquisitions trigger an adjustment of volume thresholds; Bookspan’s use of the Standard Mail rate categories to send periodic notices to consumers that their mail selection, unless, they opt out, will be sent to them; and why this case is an NSA as opposed to a more general classification case.

Proposed Procedural Schedule. Attached to the report, the settlement coordinator also filed a proposed procedural schedule (Proposed Procedural Schedule) providing dates for the procedural stages of the case, based in part on discussions with the Settlement Conference Participants.³ No objections to that proposed schedule were lodged. The Proposed Procedural Schedule is intended to accommodate the parties’ responsibilities and exigencies of the final states of Docket No. R2005-1, as well as upcoming national and religious holidays, while still providing for relatively expeditious consideration of this docket.

The settlement coordinator proposes September 7, 2005, for the close of discovery on the direct case of the co-proponents. He requests October 6, 2005 for the date of the next settlement conference. He proposes October 7, 2005 for the deadline for filing a second settlement conference report, a motion to limit issues, and a report on the availability of witnesses. He further proposes that comments on the motion to limit issues as well as parties’ identification of the expected amount of cross-examination necessary of the co-proponent’s witnesses be filed on October 12, 2005. A hearing date for cross-examination of the co-proponents’ direct case is proposed for October 17, 2005 (and October 18 and 19, 2005, if necessary).

³ At the prehearing conference, the settlement coordinator updated the dates on the Proposed Procedural Schedule relating to the hearings for cross-examination of the Postal Service’s direct case to October 17, 2005 (and October 18 and 19, 2005, if necessary). Tr. 1/11.

The filing date for the participants' case-in-chief is proposed to be October 24, 2005. Discovery directed to the interveners and the OCA is proposed to close on November 23, 2005. A hearing on the interveners and the OCA's cases-in-chief is proposed for December 12, 2005, (and December 13, 2005, if necessary).

If surrebuttal testimony is necessary, notices of intent to file surrebuttal testimony is proposed to be filed on December 14, 2005. Surrebuttal testimony is proposed to be filed by December 21, 2005. A hearing on surrebuttal testimony is proposed to take place on January 9, 2006.⁴ If surrebuttal testimony is filed, January 19, 2006, is proposed as the deadline for filing initial briefs and January 26, 2006, is proposed as the date for filing reply briefs. However, if there is no rebuttal testimony, January 6, 2006, is proposed as the deadline for filing initial briefs and January 13, 2006 as the deadline for filing reply briefs.

Presiding Officer's Response. Given the holidays, time constraints of Docket No. R2005-1 and the absence of objection by the parties of the deadlines discussed above, this Proposed Procedural Schedule is appropriate and is approved with minor changes.

⁴ The OCA stated at the prehearing conference that it currently believed that rebuttal testimony would likely be necessary in the presentation of its case. Others parties were not yet in a position to comment on the necessity of rebuttal testimony in the presentation of their cases. Accordingly, the Proposed Procedural Schedule proceeds as though parties will be presenting rebuttal testimony although a mechanism has been built into the schedule to provide for this contingency. *Id.* at 19.

RULING

A Procedural Schedule is established as shown in the Attachment.

George Omas
Presiding Officer

Docket No. MC2005-3
PROCEDURAL SCHEDULE

Completion of discovery on direct case of Proponents	Sept. 7, 2005
Settlement conference	Oct. 6, 2005
Filing of second settlement conference report, motion to limit issues and report on the availability of witnesses	Oct. 7, 2005
Comments on motion to limit issues; identify expected amount of oral cross examination	Oct. 12, 2005
Hearings for cross-examination of the Proponent's direct case	Oct. 17, 2005 (and Oct. 18 and 19, 2005 if needed)
Filing of the case-in-chief of each participant, including rebuttal to the Postal Service	Oct. 24, 2005
Completion of discovery directed to intervenors and the OCA	Nov. 22, 2005
Evidentiary hearings on the cases-in-chief of intervenors and the OCA	Dec. 12, 2005 (and Dec. 13, 2005, if needed)
Notice of intent to file surrebuttal testimony	Dec. 14, 2005
Filing of initial briefs (if no surrebuttal)	Jan. 6, 2006
Filing of reply briefs (if no surrebuttal)	Jan. 13, 2006
<i>Filing surrebuttal testimony (if requested)</i>	<i>Dec. 21, 2005</i>
<i>Hearings on surrebuttal testimony (if necessary)</i>	<i>Jan. 10, 2006</i>
<i>Filing of initial briefs (if necessary)</i>	<i>Jan. 19, 2006</i>
<i>Filing of reply briefs (if necessary)</i>	<i>Jan. 26, 2006</i>